

When recorded,
Return to:
City of Tempe
P.O. Box 5002
Tempe, AZ 85280

**AGREEMENT BETWEEN THE CITY OF TEMPE AND CAMPUS SUITES ON
THE RAIL, LLLP FOR SHARING CONSTRUCTION COSTS OF SEWER
INFRASTRUCTURE
AT 1900 E. APACHE BOULEVARD IN TEMPE**

This Agreement is entered into between the City of Tempe ("Tempe"), an Arizona municipal corporation, and Campus Suites on the Rail, LLLP, an Arizona limited liability limited partnership ("Campus Suites"), collectively "the Parties", to allocate construction costs of sewer infrastructure related to the development of multi-family residential property at 1900 E. Apache Boulevard near the light rail line.

RECITALS

A. The City of Tempe is authorized to enter into development agreements pursuant to A.R.S. Section 9-500.05.

B. The City of Tempe through its Water Utilities Department and Campus Suites have agreed to share the costs for constructing the sewer infrastructure necessary to develop a multi-family residential building at 1900 E. Apache Blvd.

C. Campus Suites agreed to install new sewer pipe in the City's right-of-way or public utility easement to tie into Tempe's existing 15-inch diameter sewer pipe in Smith Road.

D. Tempe and Campus Suites agreed that Campus Suites' contractor would design and install the new sewer pipe in accordance with Tempe standards and specifications, Tempe would review and approve the design, inspect the installation, and reimburse Campus Suites for the construction costs of 1,240 linear feet of 12-inch sewer pipe and 1,100 linear feet of 10-inch sewer pipe. Campus Suites agreed to pay for the contract administration, design, traffic control, staking, inspection and testing of the new sewer pipe in Tempe's right-of-way.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the Parties agree as follows.

AGREEMENT

1. TERMS

1.1 This Agreement sets forth the agreement of the Parties to share the costs of constructing sewer infrastructure as required for the planned multi-family residential development at 1900 E. Apache Blvd. The Recitals are incorporated into and made a part of this Agreement.

1.2 Campus Suites will contract for the design, replacement and upgrade of the existing sewer pipe. Campus Suites' contractor shall design and construct the sewer line in accordance with Tempe's standards and specifications. Before its final approval of plans and specifications, Tempe will be given an opportunity to review and make necessary changes to ensure that the design meets all applicable City of Tempe standards and requirements. Campus Suites shall have the sewer design stamped by a professional engineer registered in the State of Arizona, and shall obtain all necessary permits.

1.3 Tempe will review and approve the sewer design and inspect the sewer pipe installation, and shall reimburse Campus Suites for the pipe material costs for the 1,240 linear feet of 12-inch vitrified clay pipe and 1,100 linear feet of 10-inch vitrified clay pipe within 30-days from the time the completed project is approved and accepted by the City of Tempe, a billing statement has been submitted, and this agreement has been executed and recorded. When the completed project is approved and accepted by the City of Tempe, the City of Tempe will own the entire 2,340 linear feet of sewer pipe. The City of Tempe will own, operate, and maintain the new sewer pipe as part of Tempe's sewer collection system. Campus Suites will have no responsibility to operate or maintain the new sewer pipe when the completed project has been accepted by Tempe.

1.4 Tempe's reimbursement to Campus Suites for pipe material costs for the new sewer pipe is contingent upon Tempe's acceptance of the new operational sewer pipe having passed all required normal quality assurance tests and inspections. The total sewer pipe material cost to be reimbursed shall not exceed Thirty-One Thousand dollars (\$31,000.00).

1.5 Campus Suites shall solicit three (3) competitive bids for the sewer pipe, and the Tempe Water Utilities Department will review the costs and materials specifications for acceptability. The pipe materials contract will be awarded based on the lowest responsive bid, with bid items presented on the bid tab in a format similar to the standard Tempe CIP bid package.

1.6 Campus Suites shall indemnify and hold harmless the City of Tempe, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind arising out of the conduct or actions of Campus Suites or its contractor in connection with the sewer pipe installation at 1900 E. Apache Blvd., except to the extent resulting from the negligence or willful misconduct of the City of Tempe, its employees, agents or contractors.

2. GENERAL PROVISIONS

2.1 This Agreement constitutes the full and complete understanding and agreement of the Parties as to the allocation of construction costs for sewer infrastructure related to multi-family residential development of the property at 1900 E. Apache Blvd. This Agreement supersedes any and all previous representations, understandings, and agreements relating to its subject matter. This Agreement may not be modified except in writing signed by both Parties.

2.2 This Agreement shall remain in full force and effect even if one or more of its terms or provisions have been held to be invalid or unenforceable. The term found invalid will be ineffective without invalidating the remaining terms and provisions of this Agreement.

2.3 This Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

2.4 Any notice required under this Agreement shall be delivered to the following and shall be effective upon delivery. The designated representatives for notice purposes may be changed by written notice to the other Party.

CITY OF TEMPE, an Arizona municipal corporation

Donald B. Hawkes, Manager
Water Utilities Department
P.O. Box 5002
Tempe, AZ 85280
(480) 350-2660

Campus Suites on the Rail, LLLP
Gary K. Jones
8501 N. Scottsdale Rd., Suite 200
Scottsdale, Arizona 875253
480-443-5600

And to

Campus Suites on the Rail, LLLP

Henry Morton
1142 Kelton Avenue
Ocoee, FL, 34761
407-902-2502 x108

2.5 Before resorting to any other remedies, Tempe and Campus Suites agree to use mediation for a reasonable time to resolve any dispute or claim arising out of this Agreement.

2.6 This Agreement shall become effective upon filing with the Maricopa County Recorder.

2.7 This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of Arizona. Any litigation between the Parties arising out of this Agreement or the performance of any of the obligations contained in this Agreement shall be in the courts of Maricopa County, Arizona.

2.8 This Agreement shall be binding upon the successors and assigns of the Parties. The Parties may not assign this Agreement or any of its rights, or delegate any performance under this Agreement without the prior written consent of the other Party.

2.9 The Parties shall not grant to any other person or entity any rights that are inconsistent with, contrary to, or infringe upon any right of the other Party under this Agreement.

2.10 A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach.

2.11 The Parties will cooperate in good faith to reasonably complete the obligations set forth in this Agreement.

2.12 The term of this Agreement shall be for a period of one (1) year, or until all the obligations of the Parties under this Agreement are completed, whichever occurs first. This Agreement can be terminated only upon mutual written consent of the Parties.

2.13 Neither Party shall be deemed to be in default for failure to perform any obligation contained in this Agreement if nonperformance or default is directly caused by strikes, lockout, non-availability of materials, war or national defense, preemptions, governmental restrictions, flood, storm, fire, or other catastrophic event, acts of God, or other causes beyond the reasonable control of either Party, provided that the affected party shall commence and continue its performance with diligence and continuity immediately after the cessation or removal of the cause of the nonperformance or default.

2.14 Neither Party shall have authority to act as the agent of the other, or to enter into any legal obligations binding on the other Party.

IN WITNESS WHEREOF, Tempe and Campus Suites have caused their duly authorized representatives to execute this Agreement on their behalf this ____ day of _____, 2009.

CITY OF TEMPE, a municipal corporation of the State of Arizona

By: _____
MAYOR

Attest:

City Clerk

Approved as to form:

City Attorney

CAMPUS SUITES ON THE RAIL, LLLP, an Arizona limited liability limited partnership

BY: HSRE-CAMPUS SUITES I, L.P., a Delaware limited partnership,
Its General Partner

BY: CAMPUS SUITES OTR GROUP, LLC, a Delaware limited liability
company,
Its General Partner

BY: 
Henry A. Morton, Its Manager

